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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0661]

RIN 1625-AA11

Regulated Navigation Area; Offshore, Cape Canaveral, Florida

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On September 17, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) proposing to replace the existing safety zone in Captain of the Port (COTP) zone Jacksonville, Offshore Cape Canaveral, Florida with a regulated navigation area (RNA). Changes in the type and size of launch vehicles, rocket component recovery methods, and the increased frequency of launches now pose variable risks to marine traffic and require a more flexible regulatory tool. After considering comments received from the public, the Coast Guard is making modifications to the regulated area in the proposed rule. This supplemental notice requests comments on the revised proposal.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2021-0661 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Junior Grade Stephanie Miranda, Seventh District, Waterways Management Branch (Dpw), U.S. Coast Guard; telephone 305-415-6748, email stephanie.l.miranda@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to replace the existing safety zone in 33 CFR 165.775 titled, “Safety Zone; Captain of the Port Zone Jacksonville; Offshore Cape Canaveral, Florida” with a regulated navigation area (RNA). The existing safety zone established in 2009 is composed of four large regulated areas and was established in 2009 with the intent of protecting marine traffic from the hazards associated with the launching of space vehicles, to expedite notification to the public, and to reduce the administrative workload of the Coast Guard. However, since the establishment of the safety zone in § 165.775, changes in the type and size of launch vehicles, rocket component recovery methods, and the increased frequency of launches pose variable risks to marine traffic and require a more flexible regulatory tool.

On September 17, 2021, the Coast Guard published a notice of proposed

rulemaking entitled, “Regulated Navigation Area; Offshore, Cape Canaveral, Florida in the *Federal Register* (86 FR 51845) in order to replace the existing safety zone in § 165.775 with a RNA. During the comment period that ended on October 18, 2021, we received three comments and those comments are addressed in Section III of this SNPRM.

The Coast Guard is proposing this SNPRM under authority in 46 U.S.C. 70034. The purpose of this SNPRM is to revise the regulatory text as proposed in the NPRM to expand the zone to include additional missions which are expected to be conducted (including the Transport 2 mission conducted by the U.S Space Launch Delta 45 (SLD 45) and operations by the Blue Origin, LLC), and to include the Captain of the Port’s (COTP) consideration of analysis from (SLD 45) when activating a zone. The revised regulatory text we are proposing in this SNPRM appears at the end of this document. It differs from the text proposed in the NPRM, primarily in that it expands the zone westward to include areas of operation by the SLD 45 and the Blue Origin, LLC.

III. Discussion of Comments on the NPRM and Change to the Proposed Rule

In response to the NPRM, the Coast Guard received three public comments. Unless we receive recommendations for changes during the SNPRM comment period, we plan to adopt the regulations proposed in the NPRM with revisions to the regulatory text as reflected in this SNPRM. The SNPRM provides an additional comment period to shape the final regulatory action. Concerns received on this SNPRM will be addressed in the final rule.

The Coast Guard received a comment addressing the growing effect of commercial space travel in terms of potential for pollution and hazards to land and sea

vehicles in the path of flight. The commenter felt the proposed change was valid and important. No changes were made based on this comment.

Another comment addressed the growth of the aerospace industry in the region and associated increase in launch activity observed since 2009. The commenter felt that an evaluation of the 2009 rulemaking and the associated changes proposed in the NPRM were warranted and in the interest of preserving the safety of marine interests in the area. No changes were made based on this comment.

The Coast Guard received a comment from the Blue Origin Florida, LLC and included a request for an adjustment to the dimensions of the RNA to provide a launch hazard area suitable for potential future launches to Polar Orbits. The change was evaluated and implemented. In response to this comment, the Coast Guard made changes to the regulatory text in this SNPRM by making an adjustment to the southeast launch hazard area to encompass dimensions aligned to a Polar Orbit - mission specific launch exclusion area as provided by the SLD 45.

IV. Discussion of Proposed Rule

The proposed rule would establish a RNA in the following revised area based on comments received during the NPRM comment period: All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48'54" N, 80°28'40" W; thence southwest to Point 2 at 28°43'20" N, 80°41'00"W; thence south along the shoreline to Point 3 at 28°25'18" N, 80°34'43" W; thence continuing south offshore to Point 4 at 28°11'00" N, 80°29'00" W; thence east to Point 5 at 28°10'00"N, 80°21'13" W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in WGS 1984. These coordinates are based on

the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral. In addition, there are five launch hazard areas in which the majority of rocket launches will fall and are meant to alert mariners to the general areas in which launches will occur. We list the coordinates and locations of the five launch hazard areas in the regulatory text of this SNPRM.

When the RNA is deemed activated, the COTP or a designated representative would be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. Active restrictions are based on mission specific launch exclusion areas provided by the SLD 45, are temporary in nature, and would only be enacted and enforced prior to and just after a launch. The COTP would be able to activate any single area, a combination of areas, or establish areas within the RNA boundary area as warranted by specific risks posed by individual launches. The determination of risk would be at the discretion of the COTP and informed by the mission specific launch exclusion areas provided by SLD-45.

The COTP would inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF-FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline.

V. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of

protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

The RNA will operate in a similar way to the existing safety zone, but will reduce the size of exclusionary areas for each specific rocket launch. We expect the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The RNA will only be activated a reasonable time before a launch and deactivated once the area is no longer hazardous.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The total time of the RNA activation and thus restriction to the public is expected to be approximately one hour per launch. Vessels would be able to transit around the

activated RNA locations during these launches. We do not anticipate any significant economic impact resulting from activation of the RNA.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the activation of a RNA with exclusionary zones smaller than the existing safety zones. The activation of the RNA is expected to be

an hour total per occurrence. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2021-0661 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it.

Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Revise § 165.775 to read as follows:

§ 165.775 Regulated Navigation Area; Launch Area Offshore Cape Canaveral, FL.

(a) *Location.*

(1) The following area is a regulated navigation area (RNA): All waters offshore Cape Canaveral from surface to bottom, encompassed by a line connecting the following points beginning with Point 1 at 28°48'54" N, 80°28'40" W; thence southwest to Point 2 at 28°43'20" N, 80°41'00" W; thence south along the shoreline to Point 3 at 28°25'18" N, 80°34'43" W; thence continuing south offshore to Point 4 at 28°11'00" N, 80°29'00" W; thence east to Point 5 at 28°10'00" N, 80°21'13" W; thence north along the 12 nautical mile line back to Point 1. Coordinates are in WGS 1984. These coordinates are based on the furthest north and south trajectories of typical rocket launch vehicles originating from Cape Canaveral.

(2) Restrictions may be enforced anywhere within the boundaries of the RNA. Restrictions will be based on the risk assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by U.S Space Launch Delta 45 (SLD 45). There are five launch hazard areas that cover rocket launches.

Launch hazard areas include all navigable waters within the following coordinates, encompassed by a line starting at Point 1 connecting the following points:

(i) Northeast Launch Hazard Area:

Point 1	28°47'47" N	080°27'48" W
Point 2	28°42'18" N	080°34'55" W
Point 3	28°39'13" N	080°37'49" W
Point 4	28°32'29" N	080°33'53" W
Point 5	28°34'00" N	080°29'00" W
Point 6	28°39'43" N	080°21'57" W

(ii) East Northeast Launch Hazard Area:

Point 1	28°43'53" N	080°24'50" W
Point 2	28°36'10" N	080°35'20" W
Point 3	28°31'46" N	080°33'40" W
Point 4	28°34'42" N	080°28'40" W
Point 5	28°40'45" N	080°22'28" W

(iii) Large East Launch Hazard Area:

Point 1	28°40'32" N	080°22'21" W
Point 2	28°39'14" N	080°37'48" W
Point 3	28°27'00" N	080°31'55" W
Point 4	28°27'35" N	080°18'27" W

(iv) Small East Launch Hazard Area:

Point 1	28°39'42" N	080°21'56" W
Point 2	28°39'00" N	080°31'00" W
Point 3	28°38'00" N	080°36'58" W
Point 4	28°32'00" N	080°33'45" W
Point 5	28°31'51" N	080°20'41" W

(v) Southeast Launch Hazard Area:

Point 1	28°37'00" N	080°29'00" W
Point 2	28°35'48" N	080°34'59" W
Point 3	28°25'18" N	080°34'43" W
Point 4	28°11'00" N	080°29'00" W
Point 5	28°10'00" N	080°21'13" W
Point 6	28°19'36" N	080°23'10" W
Point 7	28°22'11" N	080°20'17" W

(b) *Definitions.* The following definitions apply to this section:

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of RNAs, safety zones, and security zones.

(c) *Regulations.* (1) The COTP Jacksonville or a designated representative may restrict vessel movement including but not limited to transiting, anchoring, or mooring within this RNA to protect vessels from hazards associated with rocket launches. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after a launch.

(2) The COTP Jacksonville may activate restrictions within any single area, a combination of areas, or establish ad hoc areas within the RNA boundary area.

Activation of prescribed or ad hoc Launch Hazard Areas will be based on the risk assessment of the Captain of the Port Jacksonville and informed by the mission specific launch exclusion areas provided by SLD 45 to account for the specific risks posed by individual launches.

(d) *Notice of activation of RNA.* The COTP Jacksonville will inform the public of the activation or status of the RNA and specific exclusion areas, by Broadcast Notice to Mariners on VHF-FM channel 16, Public Notice of Enforcement, on-scene presence, and by the display of a yellow ball from a 90-foot pole near the shoreline at approximately 28°35'00" N, 080°34'36" W and from a 90-foot pole near the shoreline at approximately 28°55'18" N, 080°35'00" W. Coast Guard assets or other Federal, State, or local law enforcement assets will be clearly identified by lights, markings, or with agency insignia.

(e) *Contact information.* The COTP Jacksonville may be reached by telephone at (904) 564-7513. Any on-scene Coast Guard or designated representative assets may be reached on VHF-FM channel 16.

Dated: December 22, 2021.

Brendan C. McPherson,

Rear Admiral,

Commander, Seventh Coast Guard District.

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